

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v-

SOLARWINDS CORP. & TIMOTHY G. BROWN,

Defendants.

23 Civ. 9518 (PAE)

ORDER


PAUL A. ENGELMAYER, District Judge:

In reviewing the parties’ joint stipulated facts, the Court noted that in footnote 1, the parties state that “in not disputing a fact, a party is not affirmatively attesting to the fact, but rather is simply not disputing it for purposes of summary judgment. Dkt. 166 (“JSF”) at 1 n.1. That provision is inconsistent with the Court’s unambiguous instruction at the March 14, 2025 pre-motion conference, at which the Court stated that the JSF “binds you throughout” and that “when the time comes for trial, you can’t run away from the factual stipulation. You can merely argue that [the fact] is inadmissible, it’s irrelevant, it’s hearsay, whatever it might be.” Dkt. 164 (“3/14/2025 Tr.”) at 27. Both parties thereupon acknowledged understanding this. *Id.*

For avoidance of doubt, notwithstanding the reservation of rights in footnote 1 of the JSF, the Court’s intention, in the event of a trial or other proceeding following resolution of the summary judgment motion, is to hold the parties to their factual stipulations in the JSF. The Court directs the parties to submit a joint letter, due at 5 p.m. on July 2, 2025, stating whether any party seeks to back away for any purpose from any fact stipulated to in the JSF, and if so,

how reserving the right to dispute the fact after summary judgment can be squared with the Court's instruction at the pre-motion conference.

SO ORDERED.

  
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PAUL A. ENGELMAYER  
United States District Judge

Dated: June 30, 2025  
New York, New York